

**REMARKS**

Claims 2, 5, and 10-16 are pending in this application. Applicants thank the Examiner for the indication of allowable subject matter of these claims, upon resolution of the formal matters found in the December 14, 2005 Office Action.

**1. Terminal Disclaimer**

In response to a rejection of claims 2, 5, 8, 10-16, and 37 under the judicially-created doctrine of obviousness-type double patenting, over claims 1-9 of U.S. Patent No. 6,371,199, Applicants previously agreed to file a Terminal Disclaimer. As agreed, in order to advance prosecution, Applicants, through their attorneys of record herein, have executed and file herewith a Terminal Disclaimer over U.S. Patent No. 6,371,199. Applicants respectfully submit that the filing of the Terminal Disclaimer obviates the grounds for the obviousness-type double patenting rejection.

Accordingly, Applicants respectfully request the Examiner to finally withdraw this rejection and pass the application to allowance.

**2. Response to Request for Information**

In the Office Actions dated February 19, 2004 and March 28, 2005, the Examiner requested information, under 37 CFR §§1.56 and

1.105, relating to details of the experiment embodied in Figure 16 of the application as filed. In the Supplemental Response and Amendment filed June 21, 2004, documenting the telephonic interview conducted on June 8, 2004, Applicant agreed to do the following: "Applicant would respond to the Request for Information in good faith, in order to best address the Examiner's concerns, to the extent that the information requested is still available."

Further to the Request for Information and Applicant's agreement to respond thereto, Assignee The Trustees of the University of Pennsylvania (herein "Applicant" due to the unavailability of the named inventor, Benjamin Gebhart), through its attorneys of record, conducted an investigation into the whereabouts of records relating to, or persons with knowledge of, the subject matter of the Request for Information.

In an effort to reach Inventor Benjamin Gebhart, Counsel contacted the Mechanical Engineering Department of the University of Pennsylvania, where Dr. Gebhart has the title "Professor Emeritus", and spoke with the Office Manager, Linda Mules. Ms. Mules advises that in her more than 3 years in that Department, she has never seen nor been able to communicate with Dr. Gebhart. Email messages received at Dr. Gebhart's university address are handled by the office staff, which has instructions to respond that Dr. Gebhart is no longer able to answer inquiries.

Upon further inquiry with senior faculty in the Mechanical Engineering Department, Counsel was advised that Dr. Gebhart is long-retired and has been in poor health for an extended period of time. Upon further inquiry through Department faculty and staff, no valid contact information could be found for Dr. Gebhart.

The location of Dr. Gebhart's laboratory notebooks and other records, documenting work from the 1986-87 time frame relevant to this matter, is unknown. The Department representatives indicated a belief that those materials were disposed of when Dr. Gebhart retired, and his laboratory and office were emptied for a new faculty occupant.

Dr. Hesketh, whose doctoral dissertation is a cited reference in previous Office Actions, and who was apparently a post-doctoral fellow working under the direction of Dr. Gebhart, does not appear in the University of Pennsylvania directories, is unknown to the Department Staff, and could not be located through the department alumni database.

Under the circumstances, Applicant submits that a reasonable and good faith effort to obtain the information requested by the Examiner has been made through sources available to the University of Pennsylvania, in compliance with Rule 105. Thus, Applicant submits that it has satisfied its duty under Rule 105, and that the requested information is "unknown and/or is not readily available

Attorney Docket No.: 24876-A  
Serial No.: 10/087,242

to the party or parties from which it was requested."

**CONCLUSION**

Based upon the above remarks, the Examiner is respectfully requested to allow remaining claims 2, 5, and 10-16. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if he has any questions or comments.

Respectfully submitted,

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